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Private Loans: Ruotolo v. State of New York

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N.Y. CONST. art. VII, § 8:

The money of the state shall not be given or loaned to or in aid of any . . . private undertaking . . . or in aid of any individual

N.Y. CONST. art. III, § 19:

The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law. No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability the claim may be presented within two years after such disability is removed.

COURT OF APPEALS

Ruotolo v. State of New York¹⁶⁸³
(decided February 17, 1994)

The state contended that the retroactive nature of General Municipal Law section 205-a¹⁶⁸⁴ violated the New York State Constitution, article VII, section 8,¹⁶⁸⁵ which prohibited the state from making a gift or loan of state money.¹⁶⁸⁶ Additionally, it contended that the law violated article III, section 19, of the New

¹⁶⁸³. 1994 WL 45627 (N.Y. Feb. 17, 1994).

¹⁶⁸⁴. General Municipal Law section 205-a is an exception to the long-standing common law “fireman’s rule” which prohibits firefighters from recovering against a property owner based upon a negligence theory. *See* Ruotolo v. State, 187 A.D.2d 160, 161-62, 593 N.Y.S.2d 198, 199, 203 (1st Dep’t 1993), *aff’d*, 1994 WL 45627 (1994).

¹⁶⁸⁵. N.Y. CONST. art. VII, § 8. The article provides in pertinent part: “The money of the state shall not be given or loaned to or in aid of any . . . private undertaking . . . or in aid of any individual” *Id.*

¹⁶⁸⁶. *Ruotolo*, 1994 WL 45627, at *3.

York State Constitution¹⁶⁸⁷ which governs the audit or allowance of a time-barred claim.¹⁶⁸⁸ The court held that neither constitutional provision was violated.¹⁶⁸⁹

In 1935, the New York State Legislature enacted General Municipal Law section 205-a in an attempt to improve the common law fireman's rule.¹⁶⁹⁰ General Municipal Law section 205-a "provide[s] a cause of action for the injury to or death of a firefighter in the line of duty caused 'directly or indirectly as a result of any neglect, omission, willful or culpable negligence'" of anyone who does not comply with governing statutes, ordinances, rules, orders or other related requirements.¹⁶⁹¹

On February 14, 1984, Officers Ruotolo and Brathwaite reported to a scene where a moped was allegedly stolen at gunpoint.¹⁶⁹² The two officers saw a person, George Agosto, near a moped.¹⁶⁹³ As the officers exited their car, Agosto began shooting at them, killing Ruotolo and seriously injuring Brathwaite.¹⁶⁹⁴ Officer Brathwaite and the estate of Officer Ruotolo brought suit against the State of New York alleging that the state, via the Parole Board, was negligent in not revoking Agosto's parole and incarcerating him.¹⁶⁹⁵ On September 2, 1988, the court of claims granted defendant state's motion for summary judgment on the ground that the claimants' theory of

1687. N.Y. CONST. art. III, § 19. The article provides in pertinent part:

The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law. No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability the claim may be presented within two years after such disability is removed.

Id.

1688. *Ruotolo*, 1994 WL 45627, at *3.

1689. *Id.* at *6-7.

1690. *Ruotolo*, 187 A.D.2d at 162, 593 N.Y.S.2d at 199.

1691. *Id.*

1692. *Id.* at 162-63, 593 N.Y.S.2d at 200.

1693. *Id.* at 163, 593 N.Y.S.2d at 200.

1694. *Id.*

1695. *Id.*

negligence was barred by the public policy considerations of the original fireman's rule.¹⁶⁹⁶

Claimants' appeal was still pending on July 12, 1989, when the General Municipal Law was amended by section 205-e, which extended the applicability of section 205-a to police officers.¹⁶⁹⁷ The appellate division affirmed the decision rendered by the court of claims, but did not decide whether the statute was applicable because the court found that the statute could not be applied retroactively.¹⁶⁹⁸

The statute was amended again on July 22, 1990, to "revive every cause of action for the personal injury or wrongful death of a police officer which was pending or was dismissed on or after January 1, 1987."¹⁶⁹⁹ Claimants moved to reargue and vacate summary judgment granted by the court of claims.¹⁷⁰⁰ The court denied this motion, reasoning that the legislative history "confirms that [§ 205-e] is to be construed *in pari materia* with section 205-a and that the statute and regulation allegedly violated are not ones which deal with on-premises safety and maintenance."¹⁷⁰¹ The claimants then appealed to the appellate division and argued that this determination was incorrect.¹⁷⁰²

1696. *Id.* at 163-64, 593 N.Y.S.2d at 200.

1697. N.Y. GEN. MUN. LAW § 205-e (McKinney 1993). This section provides in relevant part:

In addition to any other right of action or recovery under any other provision of law, in the event any accident, causing injury, death or a disease which results in death, occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments . . . the person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury or death shall be liable to pay any officer, member, agent or employee of any police department . . . or to pay to the spouse and children, or to pay the parents . . . a sum of money

Id.

1698. *Ruotolo*, 187 A.D.2d at 164, 593 N.Y.S.2d at 201.

1699. *Id.*

1700. *Id.*

1701. *Id.* at 165, 593 N.Y.S.2d at 201.

1702. *Id.*

The appellate division stated that courts have not held that “merely because the statute establishing such right is retroactive, it is unconstitutional.”¹⁷⁰³

The New York Court of Appeals considered the constitutional issues regarding the state making a gift or loan of state money and the audit or allowance of a time-barred claim.¹⁷⁰⁴ In deciding whether there was an article VII violation, the court stated that it had previously found that the Legislature may make use of public money to redress a wrong, even if no legal duty to compensate existed, as long as it appeared that “not to act would condone a travesty of justice.”¹⁷⁰⁵ The court confirmed that if the Legislature’s decision was based upon a satisfactory moral obligation, the nonprofit prohibition was not violated.¹⁷⁰⁶

The court determined that the legislative intent of the legislation at issue was sufficient to support a moral objective.¹⁷⁰⁷ Additionally, in support of a moral obligation, the court looked to the fact that the regeneration of these claims did not reward judgment or give a direct gift of any forbidden state property.¹⁷⁰⁸ As the court eloquently stated, “[i]t is, in a governmental sense, admirable that the law-enacting branches of government of the state have persevered so diligently to satisfy a perceived moral obligation to citizens for harms inflicted on them within a narrow constitutionally permissible framework.”¹⁷⁰⁹

1703. *Id.* at 168, 593 N.Y.S.2d at 203 (citing *Jackson v. State*, 261 N.Y. 134, 139, 184 N.E. 735 (1933)). Thus, the first department, by looking to the legislative intent, noted that the amendment to provide for a retroactive cause of action was not unconstitutional. *Id.* at 169-70, 593 N.Y.S.2d at 204-05. The court further recognized that there is no federal or state constitutional prohibition against bills of attainder and ex post facto laws within the United States Constitution. *Id.* See also U.S. CONST. art. 1, § 9, cl. 3. The clause states in pertinent part: “No Bill of Attainder or ex post facto Law shall be passed.” *Id.*

1704. *Ruotolo*, 1994 WL 45627 at *3.

1705. *Id.* at *5.

1706. *Id.*

1707. *Id.*

1708. *Id.*

1709. *Id.*

In *Farrington v. State*,¹⁷¹⁰ the court of appeals delineated examples of where a moral obligation may exist.¹⁷¹¹ The court stated:

Instances in which enactments, authorizing the allowance of private claims, have been held to be constitutional, since it might reasonably be said that the sanctioned claims involved moral obligations, have been subject to classification under two heads The second are claims involving injuries and damages wrongfully inflicted upon individuals by those in the State service or others for whose acts the State might justly be regarded as responsible.¹⁷¹²

In conclusion, the court agreed with the finding of the appellate court that the retroactive effect of General Municipal Law section 205-e was not violative of article III, section 19 of the New York Constitution.¹⁷¹³ Thus the court affirmed the decision rendered by the appellate division.¹⁷¹⁴

1710. 248 N.Y. 112, 161 N.E. 438 (1928).

1711. *Id.* at 116, 161 N.E. at 440.

1712. *Id.*

1713. *Id.* See *Jackson v. State*, 261 N.Y. 134, 139, 184 N.E. 735, 736 (1933) (holding that retrospective laws were not per se unconstitutional).

1714. *Ruotolo*, 1994 WL 45627, at *7.

